



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE

FROM: COMMISSION SECRETARY *MWD*

DATE: AUGUST 17, 2005

SUBJECT: COMMENT: DRAFT AO 2005-10

Transmitted herewith is a timely submitted comment by Representative Howard L. Berman regarding the above-captioned matter.

Proposed Advisory Opinion 2005-10 is on the agenda for Thursday, August 18, 2005.

Attachment

HOWARD L. BERMAN
28TH DISTRICT, CALIFORNIA

**COMMITTEE ON
THE JUDICIARY**
RANKING MEMBER, SUBCOMMITTEE ON
COURTS, THE INTERNET
AND INTELLECTUAL PROPERTY
SUBCOMMITTEE ON
IMMIGRATION AND CLAIMS

**COMMITTEE ON
INTERNATIONAL RELATIONS**
SUBCOMMITTEE ON
THE MIDDLE EAST AND CENTRAL ASIA



**Congress of the United States
House of Representatives**

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August 17, 2005

Federal Election Commission
999 E Street N.W.
Washington, DC 20463

BY FAX:

TO THE COMMISSIONERS:

I have joined with Congressman Doolittle in requesting Commission approval of our right, as federal elected officials, to raise funds under state law for the initiatives scheduled for a vote on the November ballot in California. The General Counsel has recommended to the Commission that it reject this request. I am deeply concerned about the reasoning behind this recommendation and the result that it would compel, and I am writing to express my concerns on the record. I have also contacted Commissioners directly to express these concerns, pursuant to Commission rules that provide that these contacts also be noted, by summary prepared by the Commissioners, for the record.

As a Member of Congress, I should have the same right as the Governor of the state and other state elected officials to participate in all aspects of the campaign on these initiatives. The Governor has called this election, authorizing the forming of committees to place these questions on the ballot and providing them, through his personal fundraising efforts and those of his authorized representatives, with the funding that these committees need. My constituents would expect no less from me; and this expectation is one that every Member of Congress in California will need to meet in the coming months of debate on the vital issues presented by these initiatives.

As a supporter of campaign finance reform throughout my career, who voted for the BCRA, I am unable to see how the approval of our request would endanger any of the legitimate objectives of this reform. The General Counsel's draft, as I read it, acknowledges that the law as enacted does not prohibit in express terms activities such as those we propose, conducted in an off-year to influence ballot initiatives.

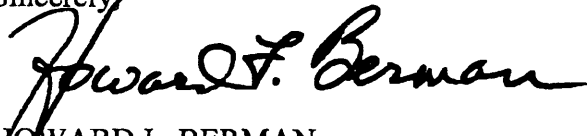
The draft seems to rely on an Opinion issued to Congressman Flake in completely dissimilar circumstances. Also, as pointed out by our counsel in comments filed today, the effect of adoption of the draft will be to open up serious inconsistencies in the application of BCRA, allowing candidates in other cases, where the electoral benefit to

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them is clear, to raise far more money than federal officeholders who seek to support ballot initiative campaigns without any connection to their pending reelection efforts.

The counsel will speak for us on the law. What I can add here is the perspective and concern of a Member of Congress elected to represent the interests of his constituents and to satisfy the obligations of his office. In a circumstance like this--one that is highly unusual and non-recurring, involving no prospect of advantage to our re-election efforts next year--any doubt about Congressional intent should be resolved in favor of permitting us to participate in this campaign on the same basis, with the same rights, as state elected officials.

Sincerely,

A handwritten signature in black ink, reading "Howard L. Berman". The signature is written in a cursive, flowing style with a large initial "H".

HOWARD L. BERMAN
Member of Congress